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5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF OHIO
7 WESTERN DIVISION
8 - - -

9 HENRY WILLIAMS, :
10 :
11 Plaintiff, :
12 :
13 vs. : CASE NO. C-1-02-533
14 :
15 MILTON CAN COMPANY, INC. and :
16 BWAY MANUFACTURING, :
17 :
18 Defendants. :
19 :
20 - - -

21 DEPOSITION

22 of CHARLES KOBMANN, taken before me, Kathy J. Nicholson,
23 Registered Professional Reporter and Notary Public in and
24 for the State of Ohio at large, as on cross-examination,
25 at the Hampton Inn, 858 Eastgate North Drive, in the City
of Batavia, County of Clermont, and State of Ohio, on
Tuesday, the 28th day of October, 2003, beginning at 11:25
o'clock, a.m.
- - -

Charlene E. Nicholas & Assoc., Inc.
111 Briar Heath Circle, Dayton, OH 45415-2601
Phone: (937) 277-8512 Fax: (937) 275-8179

EXHIBIT

B

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 WILL ALLEN, ESQ.
 4 CASPER & CASPER
 5 One N. Main Street
 6 P.O. Box 510
 7 Middletown, OH 45042

8 On behalf of the Defendant:

9 DAVID BLACK, ESQ.
 10 DINSMORE & SHOHL
 11 1900 Chemed Center
 12 255 East Fifth Street
 13 Cincinnati, OH 45202

14 ALSO PRESENT: JOHN MCMAHAN, HENRY WILLIAMS

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18 INDEX OF EXAMINATION

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20 Name of Witness
 21 Charles Kobmann

Page

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23 Cross-Examination by Mr. Allen 3

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27 INDEX OF EXHIBITS

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29 NO EXHIBITS MARKED

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1 45244.

2 Q. How long have you been at that address?

3 A. Oh, gosh. Let's see. Since '77.

4 Q. No plans to move anytime soon?

5 A. No, I built that myself. I'm staying.

6 Q. Any plans on retiring from Bway anytime soon?

7 A. No, I guess got to have something to do, so I
8 just -- that's become like my family after 37 years.

9 Q. Been there 37 years?

10 A. Yes.

11 Q. When did you hire in?

12 A. July 28th, that was 1966.

13 Q. Lots of people there a long time.

14 A. Yes, yes.

15 Q. What's the highest education that you completed?

16 A. High school.

17 Q. Graduate?

18 A. Yes.

19 Q. Where from?

20 A. Amelia High School.

21 Q. Any post high school training or certifications?

22 A. No, no.

23 Q. Did you work during high school?

24 A. Yeah, helped carry hod as a bricklayer. I was
25 learning to do that, not every weekend, but when I had a

1 Q. And I imagine that the company had to hold your
2 spot open when you came back?

3 A. Yes, they did. Yes.

4 Q. When you first went to Heekin right out of high
5 school, what position did you hire in at?

6 A. General worker.

7 Q. And were you still in that position in '68?

8 A. Yes, yes.

9 Q. Just kind of a floater laborer?

10 A. Whatever, yeah, whatever they need cleaned up.

11 Q. Experience for being a grunt?

12 A. That's it. That's it. Still on the ground
13 looking for my first chance.

14 Q. After you came back when you got discharged, did
15 you go back to being a general worker?

16 A. Yes, I did. Yes.

17 Q. And at sometime did you fall into a more
18 permanent labeled position?

19 A. Forklift operator.

20 Q. When did you become a forklift operator?

21 A. Oh, I'd say early seventies, Will.

22 Q. And how did you get that position? Did you bid
23 for it or --

24 A. My foreman come up one night and said, "We hear
25 you're interesting in driving a forklift."

1 I said, "Yes, I am."

2 They said, "It's your lucky night. So and so
3 didn't come in. Jump on it."

4 I said, "I've never been on a truck before."

5 "Here's how you drive the truck. You spill a
6 load, you're coming off."

7 That training was altogether different.

8 Q. Training by fire?

9 A. You got it. Thank goodness I had some buddies
10 that took me under their wing and helped me out.

11 Q. Heekin had fork trucks going back all the way to
12 your date of hire in '66?

13 A. The old Yale floor shift.

14 Q. At sometime after the early seventies when you
15 leapt into that spot and somebody didn't show up, you
16 stayed on that position?

17 A. Yeah, it was just kind of what I did was
18 forklift operator.

19 Q. Did you at some time get more formal training on
20 how to operate?

21 A. No. It wasn't until '70 or '87 was actually,
22 yeah, '87, a little bit before '87, Claude had asked, he
23 was getting ready to retire, and he was the forklift
24 instructor then, and they'd asked me if I would be
25 interested in going away to learn to be a trainer. He had

1 well -- it was before '87. I mean, you know, I don't know
2 how many years Claude had it, Will, before he retired.

3 Q. When the more formal training came in, I assume
4 that any fork truck operators that came in after that was
5 instituted, they got the formal training?

6 A. Yes.

7 Q. How about the folks who had already been trained
8 on the job and were already experienced operators, did
9 they have to go through the training too?

10 A. Well, once it became, you know, every three
11 years, they had to be relicensed, okay, but before that,
12 once, you know, up to when Claude took over, it was if you
13 was doing a good job, you got to stay on. If somebody
14 didn't like how he was doing, they could take you off,
15 which is still how it is for the foremen, if they're not
16 happy with someone, they've got the right to take them
17 off.

18 Q. If somebody is operating a fork truck unsafely,
19 even if it's their first violation, the foreman has the
20 authority to remove them from operating that vehicle?

21 A. The foreman has the right to discipline the
22 driver. Now, if they call me and say Cork, we want this
23 person to go through training again to be recertified,
24 then at that time, that's what I perform is to schedule
25 that driver, and now, any incident, even if the driver is

1 not at fault, I have them recertified. That's the new
2 procedure.

3 Q. When did that come into effect?

4 A. Oh, Will.

5 Q. Before or after Jake's injury?

6 A. That was probably just about where it was
7 supposed -- might not have even been in effect yet as far
8 as what they call the recertification, but it was close.
9 I mean it was around in that area. See, there was a long
10 time, again, there was no rules on really who drove and
11 who didn't drive. I mean if the foreman felt you was
12 doing a good job, he kept you on there. There wasn't
13 really no test or anything you took. This is before
14 Claude came along, you know --

15 Q. Right.

16 A. -- and started applying some --

17 Q. But as of 1987 when you became a forklift
18 instructor --

19 A. I had a test that I put together that I
20 received, you know, Claude let me have all his material
21 that he had that he trained off of, and since that test,
22 I've put a new test in now that really covers, I mean it's
23 a good test. It covers, and I can always go show you a
24 copy of both back then when Claude's test, I've got that
25 still, and then the new test that I give. I mean there's

1 still a lot of things that's the same, but there's a lot
2 of new addition to the test.

3 Q. Each time an employee is recertified, does that
4 test go into their file?

5 A. Yes. Yes.

6 Q. Do you know a fellow by the name of Bob Francia?

7 A. Yes, yes.

8 Q. Do you know who trained him to operate a fork
9 truck?

10 A. Bob was trained by me, yes.

11 Q. Do you know approximately when you trained Bob?

12 A. Let me think. I don't know if John ever had --
13 if John Goebel ever trained. I mean what I'm saying now,
14 Will, is going back, and Bob would know if he had any
15 training by John before John retired. Do you know what I
16 mean?

17 But I definitely have Bob's file and with my
18 records too, and in fact, I had to present that file when
19 the accident occurred to show him that, you know, he had
20 license, and he had, but that, has that ever been found?
21 That was a whole thing. Back then, the personnel manager
22 then had asked for all that, and I had to show him, but I
23 never got that back, and see, so that's, I mean Bob as far
24 as I remember, I had him once for sure that I licensed
25 him, and that was the license that he was actually

1 carrying when this accident occurred. I mean that was --

2 Q. So your licensure and testing file was separate
3 from his personnel file?

4 A. Yes. Yes.

5 Q. And if I've asked for his personnel file, and
6 that doesn't contain any tests or anything or results of
7 his licensure, then the testing file that you would have
8 maintained is still out there somewhere?

9 A. Yes, my testing file is all kept in my office
10 with all their files of all the drivers.

11 Q. Who did you provide that file to?

12 A. Oh, gosh. Mike Conley is who asked for it.

13 Q. Now, through some other depositions, we've
14 learned that Bob was actually a maintainer or a
15 maintenance person, and he had some kind of an industrial
16 injury, and he required some light-duty employment. Are
17 you familiar with that at all?

18 A. No, no.

19 Q. Do you know if Bob had a handicapped license on
20 his vehicle?

21 A. That I don't, Will, no.

22 Q. Regardless of what John Goebel may have --

23 A. Worked with Bob.

24 Q. -- worked with Bob, tell me what training you
25 recall giving Bob?

1 A. Okay. Bob went through a written test and a
2 driving test. They have to pass both to receive a
3 license, and that license is good for three years, and at
4 any time, like I say, it's the foremen are the ones, they
5 can say Cork, I -- we gave him three warnings or, you
6 know, Cork, he just came to us and said his eyesight is
7 failing so quick that we're going to take him off the
8 truck until we get, you know, find out what's all wrong
9 here, you know.

10 Once this is reported to me, like I say, that,
11 you know, is where they say well, Cork, we'd like you to
12 retest him one more time to see what you think, but that's
13 basically what I get is from what the foremen want to do
14 as far as --

15 Q. As far as?

16 A. Whether he's, you know, to see if he's capable
17 of still driving a truck through maybe his eyesight or an
18 arm injury, you know, to where he's capable of performing
19 his job.

20 Q. Did you ever have to test his eyesight?

21 A. No.

22 Q. Was an eye test part of the training or
23 qualifications to drive?

24 A. That was always a part of the company, they
25 actually had a hearing test, and they used to have an eye

1 exam.

2 Q. Do you know if Bob Francia ever had to have an
3 eye exam to renew his license?

4 A. That I don't know.

5 Q. Did Bob wear glasses?

6 A. I think Bob wears glasses, yeah, I'm pretty
7 sure.

8 Q. Do you know if they're thick or thin?

9 A. No, no.

10 Q. Did anybody ever come to you with concerns about
11 Bob's eyesight prior to Jake's injury?

12 A. No.

13 Q. Did you ever have to give a refresher course to
14 Bob prior to Jake's injury other than the every three year
15 refresher?

16 A. I am real sure that I recertified Bob, but
17 again, everything on Bob's record I presented, and his
18 file, when I went over to get it was empty, but Bob, now
19 he might think, you know, well, say Cork, I don't remember
20 being recertified, but I'm almost positive one of the
21 foremen had sent Bob to me to be recertified, and that,
22 like I say, to Bob though, he just might have thought he
23 was just getting his new license, because it's the same
24 thing, you know, as far as recertification is just like,
25 Will, if you was coming to get your license for the first

1 time, it's going through everything.

2 The only thing that would change, let's say I
3 knew exactly what you did wrong to get you there in my
4 office, okay. I am going to work with you extra in that
5 field so we can keep it from happening again.

6 A good example was I had a lady here that had to
7 be recertified here, okay. What had happened, she looked
8 at the cans, okay, and they was leaning pretty bad. Okay.
9 And instead of going to get the foreman to make sure that
10 the foreman was standing there saying okay, look, if we've
11 got to get this truck out of here tonight, I want you to
12 see the condition these cans are in.

13 Well, her and another girl decided on themselves
14 that they could. Let's try it. Well, when they got the
15 first can, they missed their placement. Next thing they
16 know, that can, it was like domino effect.

17 Well, when I had her in my class, like she said,
18 she said, Cork, I should have waited. There's one of the
19 fellows on day shift, he's been there a long time, and
20 he's really good at taking care of situations like that,
21 getting it down without causing any problem, and, you
22 know, she said I really should have waited, or like you
23 said, and I will do this next time, I will go get a
24 foreman. Then she's got some authorization of what she's
25 doing.

1 But these, what I try to do, Will, is whatever
2 caused the accident in that, you know, to work on them in
3 that field so that they would know what to do next time.

4 Q. Before Jake's incident, did you ever have to
5 retrain anybody for either striking a pedestrian or a near
6 miss with a pedestrian?

7 A. No. I tell you, out of 37 years, been blessed
8 with a real good record, especially when I go away and
9 hear about other facilities like Ford where there's been a
10 couple killed.

11 Q. What's the biggest hazard posed by a fork truck?

12 A. It's the condition, condition of what you're
13 operating. Like I say, there's a lot of rows that they've
14 got to come in and go out of, and when you're backing out
15 of them rows, your counterweight is out in that row
16 sometimes before you can see anything, so that's why it's
17 important they hit the horn and slow until they are
18 actually able to see. Yes, their mirrors will let them
19 see anybody directly behind them, but somebody walking
20 along the can rows, the Toyota trucks have a real good
21 sounding horn on them, and that's one thing that when I go
22 in to look at the new trucks and the competition that's
23 coming in to try to get into the facilities to place their
24 trucks in there, those are the safety features that I'm --
25 I really look at.

1 The new Toyota 7 series is a truck now, you
2 can't turn it over. What a feature.

3 Q. You talked about the hazards of backing and the
4 counterweight getting out into the aisleway, but what risk
5 does that pose? What danger is it that you're -- the
6 biggest danger posed by a fork truck is what?

7 A. You're sitting on a deadly weapon when you think
8 about it. You've got two forks in the front. It's just
9 like I say, those forks, to a human or to a product, what
10 damage those things could do, and the counterweights, I
11 mean it's just like once I knew Jake was between two
12 counterweights, I knew I had internal injuries.

13 I mean that's one of the biggest things. It's
14 not the cuts and all this with forklifts, it's the
15 internal injuries from the two counterweights. I mean
16 you're talking 10,000-pound trucks. It's amazing what --

17 Q. Are fork trucks the biggest hazard or risk at
18 the plant?

19 A. I would say, yes. Yes.

20 Q. And if someone was pinned between a fork truck
21 and a stationary object, an injury is certain to occur?

22 A. Yes.

23 Q. Would the risk of that injury increase in
24 relation to someone backing a fork truck without honking
25 the horn?

1 A. Say that again, Will?

2 Q. Would the risk of that occurring, someone being
3 struck by a fork truck --

4 A. Right.

5 Q. -- would that increase when a fork truck is in
6 operation in reverse without honking the horn?

7 A. Okay. Also, that's where the back-up alarms. I
8 have those and the counterweights mounted in there in
9 case, like I say, they're supposed to hit the horn.
10 You've got your mirrors, you know, looking over your
11 shoulders, but that counterweight back-up alarm has really
12 been a big plus in sounding. Anytime that truck's going
13 backwards, Will, that counter or that back-up alarm and
14 counterweight is active.

15 Q. Did the trucks have the back-up alarms --

16 A. Yes.

17 Q. -- at the time of Jake's injury?

18 A. Yes, they did, yes.

19 Q. Do you know if the truck that Bob Francia was
20 operating had that back-up alarm?

21 A. Yes.

22 Q. Was it functional?

23 A. Yes.

24 Q. Do you know who tested that after the incident?

25 A. Oh, no, no. Let's see. We had -- at one time